WONG SIEW CHOONG SDN BHD

v.

ANVEST CORPORATION SDN BHD

COURT OF APPEAL, KUALA LUMPUR
MOKHTAR SIDIN JCA
ABDUL KADIR SULAIMAN JCA
ALAUDDIN MOHD SHERIFF JCA
[CIVIL APPEAL NO: W-02-866-1999]
29 APRIL 2002

CONTRACT: *Sale and purchase of land - Specific performance - Part of land subsequently acquired by government - Whether balance remaining capable of specific performance - Whether purchaser was beneficial owner of land at the time of acquisition and therefore entitled to acquisition award - Whether acquisition award should be deducted from purchase price - Specific Relief Act 1950, ss. 12, 13*

LAND LAW: *Sale of land - Specific performance - Part of land subsequently acquired by government - Whether balance remaining capable of specific performance - Whether purchaser was beneficial owner of land at the time of acquisition and therefore entitled to acquisition award - Whether acquisition award should be deducted from purchase price - Specific Relief Act 1950, ss. 12, 13*

The respondent as plaintiff in the High Court, sought for, *inter alia*, specific performance of a contract of sale of a piece of land ('the said land') entered with the appellant, the defendant therein. The High Court dismissed the action. However, on appeal by the respondent, the Court of Appeal allowed the appeal and ordered the case to be remitted to the High Court for compliance with the terms of the agreement between the parties. The appellant appealed to the Federal Court against the order of the Court of Appeal but that was dismissed by the Federal Court which affirmed the decision of the Court of Appeal.

Following the order of the Court of Appeal, the respondent applied to the High Court for specific performance of the contract of sale. In the meantime, part of the said land was acquired by the government. Before the learned judge, the issue was whether the respondent was required to pay the full purchase price for the said land in view of the acquisition of part of the said land. The learned judge held that the respondent was the beneficial owner of the said land at the time of acquisition and therefore, the acquisition award belonged to the respondent and must be deducted from the purchase price. The appellant now appealed to this court against that decision of the learned judge.

The appellant submitted that the order of the Court of Appeal as affirmed by the Federal Court for specific performance had not resulted in the affirmation of the contract of sale between the parties. Further, the contract between the parties was frustrated due to the government's acquisition of part of the said land.

Held:

Per Abdul Kadir Sulaiman JCA

[1] The order of the Court of Appeal directing the High Court for a proper order to be made for the completion of the contract between the parties must be for the reason that there was a subsisting contract between them and the completion of it was with a view to ultimately cloak the respondent with the legal estate which it bargained for. (p 416 g-h)

[2] The frustration if at all as contended by the appellant was in respect of only a minor portion of the said land, *ie*, the acquired part but not in respect of the balance which was still capable of specific performance (ss. 12 and 13 Specific Relief Act 1950). The said land which forms the subject matter of the agreement was 100,934 sq. ft. (9,377 sq. metres) in area. However, only 13131 sq. ft. (1220 sq. metres) of the said land was acquired. This acquired portion in relation to the whole area contracted was only a small portion of the whole. Hence, s. 13 of the Specific Relief Act 1950 would apply. (pp 418 i & 419 a-d)

[3] Under s. 13 of the Specific Relief Act 1950, the compensation money due to the respondent under the contract of sale it entered with the appellant should be the acquisition award of RM5,252,783.20 the appellant had received from the government. (p 419 d-f)

[4] With the order of the Court of Appeal as affirmed by the Federal Court, it was beyond dispute that there was a valid contract of sale of the said land. Applying the doctrine in *Lysaght v. Edwards*, the appellant became in equity the trustee for the respondent of the said land sold, and the beneficial ownership passed to the respondent subject to the appellant's right to the purchase money, a charge or lien on the said land for the security of the purchase money and a right to retain possession of the said land until the purchase money was paid by the respondent. (p 420 a-d)

[5] As a trustee for the respondent in respect of the said land, upon the respondent paying the purchase price of RM5,551,370 as contracted for, the beneficial ownership in the remaining portion of the said land plus the compensation money paid in respect of the acquired portion of the

said land would pass to the respondent. It was unfortunate though for the appellant that a big amount of compensation was paid for a minor portion of the said land acquired, but as far as the law was concerned, that amount of compensation belonged to the respondent as a beneficiary of the said land. In the circumstances, the learned judge was right that the amount to be paid by the respondent was the total purchase price of the said land less the acquisition award that was paid to the appellant by the government. (p 420 d-h)

[Appeal dismissed.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Responden sebagai plaintif di Mahkamah Tinggi memohon antara lain pelaksanaan spesifik perjanjian jual-beli sebidang tanah ('tanah tersebut') yang disempurnakan dengan perayu iaitu defendan ketika itu. Mahkamah Tinggi telah menolak permohonan tersebut. Walaubagaimanapun, responden memfailkan rayuan dan Mahkamah Rayuan telah membenarkan rayuan itu dan mengarahkan kes itu dikembalikan ke Mahkamah Tinggi bagi tujuan pematuhan terma-terma perjanjian antara kedua-dua parti. Perayu telah merayu ke Mahkamah Persekutuan terhadap perintah Mahkamah Rayuan tersebut tetapi rayuan tersebut ditolak dan Mahkamah Persekutuan mengesahkan keputusan Mahkamah Rayuan itu.

Lanjutan dari perintah Mahkamah Rayuan itu, responden telah memohon ke Mahkamah Tinggi untuk pelaksanaan spesifik perjanjian tersebut. Dalam masa itu, sebahagian daripada tanah itu telah diambil kerajaan. Isu di hadapan hakim mahkamah adalah sama ada responden perlu membayar sepenuhnya harga pembelian tanah selepas mengambilkira pengambilan sebahagian tanah tersebut oleh kerajaan. Hakim mahkamah memutuskan bahawa responden adalah pemilik benefisial tanah tersebut pada masa pengambilan sebahagiannya dan dengan demikian, award pengambilan tanah itu adalah milik responden dan perlu ditolak daripada harga belian tanah. Perayu kini merayu ke mahkamah ini terhadap keputusan hakim tersebut.

Perayu berhujah bahawa perintah Mahkamah Rayuan seperti yang disahkan oleh Mahkamah Persekutuan untuk pelaksanaan spesifik tidak mengakibatkan pengesahan perjanjian antara kedua parti. Tambahan pula, perjanjian antara kedua parti itu terkecewa disebabkan pengambilan sebahagian tanah tersebut oleh kerajaan.

Diputuskan:
Oleh Abdul Kadir Sulaiman HMR

[1] Perintah Mahkamah Rayuan mengarahkan Mahkamah Tinggi supaya satu perintah yang sesuai dibuat untuk penyempurnaan perjanjian di antara kedua parti mestilah disebabkan masih wujud perjanjian di antara mereka dan penyempurnaan perjanjian itu bertujuan memberikan sepenuhnya kepada responden hartanah yang sah seperti yang dijanjikan.

[2] Kekecewaan kontrak seperti yang dikatakan oleh perayu sekiranya ada adalah berkenaan sebahagian kecil tanah tersebut iaitu bahagian yang diperolehi oleh kerajaan dan bukan terhadap bakinya yang masih boleh dituntut melalui pelaksanaan spesifik (ss. 12 dan 13 Akta Relif Spesifik 1950). Tanah tersebut adalah seluas 100,934 kaki persegi (9,377 meter persegi). Tetapi hanya 13131 kaki persegi daripada tanah tersebut yang diambil. Bahagian yang diambil ini adalah kecil berbanding dengan keseluruhan tanah tersebut. Maka s. 13 Akta Relif Spesifik 1950 terpakai.

[3] Di bawah s. 13 Akta Relif Spesifik 1950, wang pampasan responden di bawah perjanjian jual-beli itu sepatutnya berjumlah RM5,252,783.20 iaitu award pengambilan tanah yang diterima perayu daripada kerajaan.

[4] Dengan pengesahan perintah Mahkamah Rayuan oleh Mahkamah Persekutuan, tidak boleh dipertikaikan bahawa terdapat perjanjian jual-beli tanah yang sah. Dengan pemakaian doktrin dalam *Lysaght v. Edwards*, perayu dalam ekuiti menjadi pemegang amanah kepada responden atas tanah tersebut dan pemilikan benefisial berpindah kepada responden tertakluk kepada hak perayu atas wang pembelian itu, caj atau *lien* tanah sebagai cagaran wang pembelian dan hak mengekalkan milikan tanah itu sehingga wang pembelian itu dibayar oleh responden.

[5] Perayu sebagai pemegang amanah responden tanah tersebut dan atas responden membayar wang pembelian sebanyak RM5,551,370 seperti mana yang dijanjikan, milikan benefisial baki tanah serta wang pampasan bagi tanah yang diperolehi itu berpindah dari perayu ke responden. Adalah malang bagi perayu bahawa jumlah pampasan yang besar diberikan ke atas sebahagian kecil tanah yang diambil kerajaan, tetapi menurut undang-undang jumlah pampasan itu adalah milik responden sebagai benefisari tanah tersebut. Dalam keadaan ini, keputusan hakim bijaksana adalah betul bahawa jumlah yang perlu dibayar oleh responden adalah harga penuh pembelian itu tolak wang pampasan yang dibayar kepada perayu oleh kerajaan.

[Rayuan ditolak.]

Case(s) referred to:
Johnson & Anor v. Agnew [1979] 1 All ER 883 ***(refd)***
Lee Seng Hock v. Fatimah Zain [1996] 4 CLJ 519 ***(refd)***
Lim Kim Som v. Sheriffa Taibah Abdul Rahman [1994] 1 SLR 393 ***(refd)***
Lysaght v. Edwards [1875-1876] 2 Ch D 499 ***(refd)***
M & J Frozen Food Sdn Bhd & Anor v. Siland Sdn Bhd & Anor [1994] 2 CLJ 15 ***(refd)***
Temenggong Securities Ltd & Anor v. Registrar of Titles, Johore & Ors [1974] 2 MLJ 45 ***(refd)***

Legislation referred to:
Specific Relief Act 1950, ss. 12, 13

For the appellant - Logan Sabapathy (Harcharan Singh & P Gananathan); M/s Harcharan & Co
For the respondent - Wong Kim Fatt; M/s Gulam & Wong

Reported by Usha Thiagarajah

JUDGMENT

Abdul Kadir Sulaiman JCA:
The appellant was the registered owner of all that piece of land known as lot no. 129, section 4, held under grant no. 6853 measuring 100,934 sq. feet (9,377 sq. m.) or thereabouts, situated in the town and district of Kuala Lumpur (hereinafter referred to as "the said land"). By a letter dated 11 October 1988 the respondent's agent wrote to the appellant:

> Proposed Sale of Property held under Lot No 129, Section 44, Town and District of Kuala Lumpur (100,934 sq feet)
>
> We are pleased to inform you that the purchaser has confirmed to purchase the abovementioned land.
>
> The terms and conditions, as agreed, are as follows:
>
> (1) the price is at $55.00 per sq ft;
>
> (2) the property has a freehold title;
>
> (3) you are able to give vacant possession of the property;
>
> (4) 10% (ten percentum) of the price will be paid on signing of the Sale and Purchase Agreement; and
>
> (5) the balance 90% (ninety percentum) to be paid 6 (six) months after the signing of the Sale and Purchase Agreement.

The purchaser's solicitors are:

Mr Choong Pee Choy of
M/s Choong & Co
Room 805/807, 8th Floor
Lee Wah Bank Building
Medan Pasar
50050 Kuala Lumpur
Tel: 2384682/2320858

Kindly confirm that the abovementioned terms and conditions by signing and returning the duplicate copy of this letter.

By an endorsement dated 14 October 1988, the appellant responded as follows:

The abovementioned terms and conditions are confirmed herewith.
WONG SlEW CHOONG SDN BERHAD
Managing Director.

Dispute arose over the transfer of the said land to the respondent culminating in the respondent issuing a writ against the appellant claiming *inter alia*, for specific performance and damages for breach of contract *in lieu* of or in addition to specific performance.

The learned judge hearing the suit, dismissed the suit. On appeal by the respondent, the Court of Appeal by its order of 9 December 1997 allowed the appeal and ordered that the case be remitted to the High Court for compliance with the terms of the agreement between the parties. In its written judgment of 16 February 1998, the Court of Appeal says:

Conclusion
For the reasons we have stated, we allowed the appeal of the Appellant (the respondent before us) with costs here and below, and set aside the order of the learned Judge. The deposit is to be refunded to the Appellant. We directed that this case be remitted to the High Court regarding the proper order to be made for the completion of the contract between the Appellant (Anvest Corporation Sdn. Bhd.) and the Respondent (Wong Siew Choong Sdn. Bhd.) as embodied in the letter dated 11th October 1988 (AR 196) written by Appraisal to the Respondent and confirmed by the Respondent.

On further appeal by the appellant to the Federal Court against the said decision of the Court of Appeal, the appeal was dismissed and the Federal Court affirmed the decision of the Court of Appeal mentioned earlier. In its written judgment of 1 July 1999, it says:

> We further agree that a binding and enforceable contract had been concluded between the parties by 14/10/1988 *vide* correspondence AR 253, 254 and 256 ... In our view, the Court of Appeal was justified and was right in reversing the decision of the learned trial Judge and directing the case to be remitted to the High Court for proper order to be made as to the completion of the contract.

Hence, on the order of the Court of Appeal as affirmed by the Federal Court, it is beyond dispute that a contract for the sale of the said land subsists between the appellant and the respondent.

Following the order of the Court of Appeal, the respondent purchaser by a summons in chambers of 20 May 1998 applied to the High Court for specific performance of the contract by the appellant. In its affidavit in support of the application affirmed by Kheoh And Yeng, its director, the respondent, however, deposed that part of the said land has since been acquired under the Land Acquisition Act 1960. Paragraph 5 of the said affidavit states as follows:

> 5. According to the land title search on the said land conducted on behalf of the Plaintiff on 25th March 1998, there is an endorsement of Form K, ie, Notice that Possession Has Been Taken of Land, *vide* Presn. No. 292/97 dated 1st August 1997, in respect of 1,220 square metres out of the total area of 9,377 square metres of the whole of the said land. I am advised and verily believe that the compensation awarded by the Land Administrator in respect of the said 1,220 square metres out of the said land should be deposited into Court pending its further direction and completion of the sale and purchase agreement herein. A copy of the said land search report dated 25th March 1998 is annexed hereto and marked as exhibit 'KAY4".

In reply, the appellant affirmed that the respondent has no rights or has not acquired rights in relation to the compensation paid for the acquired portion of the said land. To this, the respondent files a further affidavit to the effect that from the information received, the appellant had received an award of RM5,252,783.20 on 2 July 1997 in respect of that portion of the said land acquired by the government. Since its contract with the appellant was for the whole area of the said land and that now the area to be conveyed by the appellant would be less by the amount of the acquired portion. Therefore, the said sum of RM5,252,738.20 being the acquisition award paid to the appellant, should be deducted from the total purchase price of RM5,551,370 which is based on $55 per sq. ft.

The respondent's abovementioned summons in chambers went for hearing before the learned judge. In the course of the hearing, the learned counsel made an oral application for amendment to the said summons in chamber which was granted by the learned judge. The effect of the amendment is that

the prayer for specific performance of the contract is in respect of that piece of land less that portion acquired by the government, and the respondent is to pay only the balance of the purchase price amounting to RM298,586.80 after taking into account the amount representing the award over the acquired portion which was paid to and in the hand of the appellant. Hence, before the learned judge, the remaining issue to be determined is as to the beneficial ownership of the said land at the time of the land acquisition of a portion of the said land. Having considered the various evidence tendered and the submissions made by the parties, the learned judge on 29 September 1999 made the order in terms of the amended summons. On the single issue before him he held that the respondent was the beneficial owner of the said land at the time of the land acquisition. Therefore, the said acquisition award of RM5,252,783.20 belonged to the respondent and must be deducted from the purchase price.

The appellant is aggrieved over this decision of the learned judge. Hence, this appeal before us now. Having heard the appeal, we, on 10 May 2001 dismissed it. We now give our reasons.

At the hearing before us, the learned counsel for the appellant submitted that the order of the Court of Appeal as affirmed by the Federal Court for specific performance has not resulted in the affirmation of the contract of sale between the parties into the judgment. The order of the Court of Appeal remitting the case to the High Court regarding the proper order to be made for the completion of the contract between the respondent and the appellant as embodied in the letter dated 11 October 1998 written by the respondent's agent to the appellant and confirmed by the appellant, is no more than the equitable jurisdiction of specific performance says the learned counsel. The learned counsel based his submission over what was purportedly held by the House of Lords in *Johnson and Another v. Agnew* [1979] 1 All ER 883.

Having considered the matter, we do not think that we can agree with the submissions so made by the learned counsel. In the first place, how could the Court of Appeal make such an order directing the High Court for a proper order to be made for the completion of the contract between the appellant and the respondent if it finds that there is no subsisting contract between them? The order of the Court of Appeal for a proper order to be made by the High Court for the completion of the contract between them must be for the reason that there was a subsisting binding contract between them and the completion of it is with a view to ultimately cloak the respondent with the legal estate which it bargained for. As such, *Johnson and Another v. Agnew* is not the authority for saying that specific performance does not involve a judgment on the status of the contract. On the contrary, before specific performance is called

to be considered, there must first be a finding or decision that there subsists a binding contract between the parties. Lord Wilberforce in *Johnson and Another v. Agnew* when speaking about the election between a claim for specific performance in equity and a claim for damages at common law, said at p. 894:

> In my opinion, the argument based on irrevocable election, strongly pressed by the appellant's counsel in the present appeal, is unsound. Election, though the subject of much learning and refinement, is in the end a doctrine based on simple considerations of common sense and equity. It is easy to see that a party who has chosen to put an end to a contract by accepting the other party's repudiation cannot afterwards seek specific performance. This is simply because the contract has gone, what is dead is dead. But it is no more difficult to agree that a party, who has chosen to seek specific performance, may quite well thereafter, if specific performance fails to be realised, say, 'Very well, then, the contract should be regarded as terminated' It is quite consistent' with a decision provisionally to keep alive, to say, 'Well, this is no use – let us now end the contract's life.' A vendor who seeks (and gets) specific performance is merely electing for a course which may or may not lead to implementation of the contract; what he elects for is not eternal and unconditional affirmation, but a continuance of the contract under control of the court which control involves the power, in certain events, to terminate it. If he makes an election at all, he does so when he decides not to proceed under the order for specific performance, but to ask the court to terminate the contract (see the judgment of Greene MR in *Austins of East Ham Ltd v. Macey*). The fact is that the election argument proves too much. If it were correct it would deny the vendor not just the right to damages, but the right to 'rescind' the contract, but there is no doubt that right exists; what is in question is only the right, on 'rescission', to claim damages.

The learned counsel next questioned the decision of the learned judge in holding that the appellant vendor had to account for the amount of the compensation money which it got from the authority in respect of that portion of the said land acquired. This is so because, according to the learned counsel, to the extent of the portion acquired the contract between the parties has been frustrated. He relied on the authority of *M & J Frozen Food Sdn Bhd & Anor v. Siland Sdn Bhd & Anor* [1994] 2 CLJ 15. According to the facts in the case, the land of which Siland was the registered owner was ordered by court under the NLC to be sold by public auction at the instance of the chargee. At the sale, Frozen Food was the highest bidder and was pronounced the purchaser of the property. The purchaser paid 25% deposit over the total purchase price. As to the balance, the order was that it was to be paid into court within 30 days from the date of sale. This was not done by the purchaser. In view of this default, Siland entered a private caveat on the property and commenced an action for a rescission of the contract of sale and

forfeiture of the 25% deposit paid by Frozen Food. On technical grounds, this caveat of Siland was removed, but before it was done, Frozen Food obtained an order for the completion date to be extended. In this application for extension of time to pay the balance, Siland was not made a party. However, consequent upon its application, Siland was granted leave to intervene and apply to set aside the order for extension of time. Subsequently, a year after the date of completion, Frozen Food forwarded the balance sum of the purchase price to the SAR who accepted it and issued the certificate of sale to Frozen Food who presented the certificate for registration.

Subsequently, Siland took out a summons in chambers for final judgment to be entered against Frozen Food who in turn applied for Siland's action to be struck out. Both summonses were heard simultaneously. The trial judge declared the deposit forfeited, annulled the certificate of sale issued by the SAR and cancelled the registration of transfer in respect of the property. The judge also made orders for the return of the issue document of title and ordered the property to be resold. Frozen Food appealed to the Supreme Court against this decision of the High Court.

The issues before the Supreme Court were:

(1) whether in a sale of land in a public auction, the sale is completed at the fall of the auctioneer's hammer,

(2) whether court has the power to extend time for a defaulting purchaser to complete the sale and purchase agreement after the agreed date of completion had passed, and

(3) whether in the event of a negative answer to either circumstance above, the High Court was empowered to make the order as it did.

The appeal of Frozen Food was dismissed by the Supreme Court, *inter alia*, holding that any variation of the order of sale or the terms and conditions which in this case, the order for the extension of time to pay the balance of the purchase price, made thereunder in the absence of and without the service of the required notice upon Siland was *ultra vires* the authority to sell under the NLC. Hence, the extension order made by the SAR giving time to Frozen Food to make the payment was void as being *ultra vires* the NLC. Following from there, the title to the property was unlawfully acquired by Frozen Food.

Such being the authority relied upon by the appellant in the present case. We cannot see any relevance the case has upon the matter before us now in this appeal. In the case of *M & J Frozen Food Sdn Bhd & Anor, supra*, the sale of the property to Frozen Food is considered to be frustrated but it is so in respect of the whole property involved. However, in the present case, the frustration if at all, as contended by the appellant, is in respect of only a minor

portion of the said land, ie, the acquired part but not in respect of the balance, which is still capable of specific performance. See ss. 12 and 13 of the Specific Relief Act 1950 which state:

> 12. Notwithstanding anything contained in section 57 of the Contract Act 1950, a contract is not wholly impossible of performance because a portion of its subject-matter, existing, at its date, has ceased to exist at the time of the performance.
>
> 13. Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to the whole in value, and admits of compensation in money, the court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

In the present case, the said land which forms the subject matter of the agreement is 100,934 sq. ft. (9,377 sq. metres) in area. However, of it only 13131 sq. ft. (1220 sq. metres) was acquired. This acquired portion in relation to the whole area contracted is only a small portion of the whole. Hence s. 13 of the Specific Relief Act 1950 would apply. If this is so, what is the compensation in money to be awarded in respect of that acquired portion? The learned judge says this in his judgment:

> An area of 1,220 sq. m. (13,131.95 sq. ft.) out of total area of the said land was acquired by the Government at the rate of RM400 per sq. ft. It is not in dispute that the defendant received an award of RM5,252,783.20 on 2 July 1997.

Under the provisions of s. 13 of the Specific Relief Act 1950 this should be the compensation due to the respondent under the contract of sale it entered with the appellant. But there is more to it even without having resort to the provisions of the said s. 13. In *Temenggong Securities Ltd. & Anor. v. Registrar of Titles, Johore & Ors.* [1974] 2 MLJ 45, Ong Hock Sim FJ in delivering the judgment of the Federal Court in the matter, at p. 46 has this to say:

> In our view there can be no doubt as to the position in law. As was said by Jessel M.R. in *Lysaght v. Edwards*:
>
> > ... the effect of a contract for sale has been settled for more than two centuries; certainly it was completely settled before the time Lord Hardwicke, who speaks of the settled doctrine of the court as to it. What is that doctrine? It is that the moment you have a valid contract for sale the vendor becomes in equity a trustee for the purchaser of the estate sold, and the beneficial ownership passes to the purchaser, the vendor having a right to the purchase-money, a charge or *lien* on the estate for the security of that purchase-money, and a right to retain possession of the estate until the purchase-money is paid, in the absence of express contract as to the time of delivering possession.

Now, reverting back to the facts of the present case before us in this appeal, since the decision of the Court of Appeal which is affirmed by the Federal Court, it is beyond dispute that there is a valid contract of sale of the said land of the appellant to the respondent. The said land to be sold has a total area of 100,934 sq. ft. at an agreed price of RM55 per sq. ft. making a total purchase price of RM5,551,370. There is no express contract as to the time of delivering possession. The contract stipulates that 10% of the purchase price will be paid only on the signing of the sale and purchase agreement, which never took place. Hence, the 10% has not come into operation. As to the balance of the purchase price, it is only due six months after the signing of the sales and purchase agreement. So, applying the doctrine in *Lysaght v. Edwards, supra*, the appellant vendor becomes in equity the trustee for the respondent purchaser of the said land sold, and the beneficial ownership passes to the purchaser subject to the appellant's right to the purchase money, a charge or *lien* on the said land for the security of the purchase money and a right to retain possession of the said land until the purchase money is paid by the respondent. However, as events turned out, a minor portion of that said land had been converted into compensation money of RM5,252,783.20 which was paid to the appellant by the Government. As a trustee for the respondent in respect of the said land, upon the respondent paying the purchase price of RM5,551,370 which was agreed by the contract of sale of the said land, the beneficial ownership in the remaining portion of the said land which was not the subject-matter of acquisition by the Government plus the compensation money paid in respect of the acquired portion of the said land would pass to the respondent. It is unfortunate though for the appellant that for a minor portion of the said land acquired, a big amount of compensation was paid, but as far as the law is concerned, that amount of compensation belongs to the respondent as a beneficiary of the said land. In the circumstances, the learned judge was right when he said in his judgment:

> The completion account of the sale and purchase of the said land should be as follows:
>
> | | **RM** |
> |---|---|
> | Total Purchase Price (100,934 sq. ft. at the rate of RM55 P.S.F.) | 5,551,370.00 |
> | Less: Acquisition Award | 5,252,783.20 |
> | Amount Payable to the Defendant | M298,586.80. |

The cases of *Lim Kim Som v. Sheriffa Taibah bte Abdul Rahman* [1994] 1 SLR 393 and *Lee Seng Hock v. Fatimah bte Zain* [1996] 4 CLJ 519 concerning frustration of a contract for the sale of land can easily be distinguished on the facts of the present case. In the former, time is of the essence. Completion did not take place on the specified date. Soon after the specified date, the whole property was acquired. The compensation money was paid to the vendor through the court. The purchaser did not want to complete and asked for the return of the deposit, but the vendor wanted to forfeit same. He brought an action for balance of the purchase price or in the alternative, damages for breach. The High Court allowed the claim by the vendor and dismissed the counterclaim of the purchaser. The purchaser appeals on the ground of frustration due to acquisition and so could not deliver good title. The appeal was allowed on a peculiar circumstance of the case. Again, in the latter case, the vendor is the administratrix of a deceased estate. According to the Islamic law of inheritance in this case, the land devolved upon the vendor and Baitulmal in the proportion of a 1/2 share each. Then the whole land was compulsorily acquired. Compensation money was paid to the vendor for her 1/2 share of the property. The purchaser filed an application claiming for the said compensation money less the balance of the purchase price due under the agreement. The vendor pleaded frustration. The learned judge agreed and ordered that the compensation money in respect of her share of the inherited property be paid to her less the sum of RM4,000 being the 10% deposit to be refunded to the purchaser. The purchaser appealed against this decision. The appeal was dismissed by the Court of Appeal holding that frustration has occured. The case of *Lysaght v. Edwards* was not discussed at the two proceedings.

For the reasons mentioned we unanimously dismissed this appeal with costs to the respondent. The decision of the learned judge was affirmed.